TENTATIVE AGENDA
STATE WATER CONTROL BOARD MEETING
THURSDAY, MARCH 18, 2010
AND
FRIDAY, MARCH 19, 2010 (if necessary)

House Room C
General Assembly Building
9th & Broad Streets
Richmond, Virginia

Convene – 9:30 a.m. (Both Days)

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ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to the staff contact listed below.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is an additional comment period, usually 45 days, during which the public hearing is held.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public

comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented during the public comment period (i.e., those who commented at the public hearing or during the public comment period) up to 3 minutes to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

POOLING MINUTES: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances, new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: cindy.berndt@deq.virginia.gov.

Permits

Forest Lakes Property Owners Association, Inc. (Bedford Co.) - Virginia Water Protection Permit 09-0412

PURPOSE: To request that the State Water Control Board make a decision to issue, modify, or deny an individual VWP permit for the Forest Lakes Property Owners Association, Inc. (VWPP 09-0412). BACKGROUND: On March 31, 2009, DEQ received an application from Forest Lakes Property Owners Association, Inc. (FLPOA) for the issuance of Virginia Water Protection Permit Number 09-0412. FLPOA proposed to dredge two lakes owned by FLPOA and located within the Forest Lakes subdivision. FLPOA proposed to dredge sediment from Swan and Spring Lakes to improve boating access, fish habitat, and aesthetics. The total volume of dredged material proposed for removal is 33,700 cubic yards over an area of 9.43 acres, including up to 0.27 acres of emergent wetland. Wetland compensation is required by purchasing wetland credits from the James River Mitigation Landbank, LLC. Maintenance dredging may be conducted in accordance with the application. Sediment forebays and/or over excavated sediment basin catchment areas may be constructed in Swan Lake and Spring Lake as described in the application as dedicated maintenance areas to facilitate future maintenance dredging. The total authorized

volume of maintenance dredged material removal per maintenance cycle is 7,200 cubic yards over 1.93 acres of open water. Three dredged material disposal areas are proposed in the application; two in Bedford County and one in the City of Lynchburg, Virginia. The lakes are located in the Ivy Creek watershed, which is a tributary of the James River basin. As the application proposed more than 5,000 cubic yards of dredging, DEQ may not authorize the project with a general VWP permit based on a prohibition in the VWP general permit regulation, 9 VAC 25-690-30.A.8. The proposed activity will result in permanent impacts to no more than 0.27 acres of emergent wetlands. Impacts to 9.16 acres of open water area and 0.27 acres of PEM are proposed in association with removal of accumulated sediments. In the case of wetlands, sediment has been colonized by wetland vegetation. Initial wetland impact was proposed as 0.48 acres of wetlands. Avoidance and minimization measures resulted in the avoidance of 0.21 acres of shrub wetland impact, leaving 0.27 acres of emergent wetland impact. Taking into account the project purpose of restoring the lakes as close as possible to their original dimensions, FLPOA stated further avoidance is not practicable. Sediment quality was screened by the FLPOA by contracting for the collection of three sediment samples each from Spring Lake and Swan Lake. Samples were collected in May, 2009. The three individual sediment samples were composited into one sample for each lake and the two samples were analyzed by NELAP accredited laboratories. Each sample was tested for total organic carbon, metals, pesticides and herbicides, volatile organic compounds, semi-volatile and polynuclear aromatic hydrocarbons, polychlorinated biphenyls, total petroleum hydrocarbons, total organic halides, and nutrients. The sample data indicate all results associated with potential human toxicity, with the exception of Arsenic and Chromium, were less than applicable regulatory thresholds as listed in the Virginia Solid Waste Regulation, 9 VAC 20-80-10 *et. seq*. or Virginia's Voluntary Remediation Program "Tier II" soil screening levels for contaminants of concern. The results for Arsenic and Chromium were evaluated in consultation with DEQ's Office of Remediation Programs and determined to be within the range of naturally occurring background concentrations for soils in the Piedmont Physiographic Province of Virginia. DEQ staff does not expect that the proposed dredging, if completed in accordance with permit conditions, will contribute to significant impairment of state waters or fish and wildlife resources. Water quality impacts associated with the project are expected to be temporary and minimal provided the permittee abides by the conditions of the permit. A conversion of emergent wetland to open water will occur, but will be compensated. The draft permit was public noticed in the Lynchburg News and Advance on November 13, 2009. A copy of the special conditions of the draft permit is attached. A total of 71 comments were received during the 30-day public comment period. Of these comments, 41 requested a public hearing and 30 requested that the agency dispense with a public hearing and issue the permit. Based on the comments received, DEQ concluded there was significant and substantial public interest relevant to the issuance of VWP Permit 09-0412. A copy of a summary of comments and agency response to the public comments received on the draft permit is attached. The DEQ Chief Deputy Director concurred with holding of a public hearing, members of the State Water Control Board were notified, and no comments were received requesting a meeting of the Board to review the Director's decision to grant a hearing or to delegate the permit to the Director for his decision. Consequently, the BRRO was notified on January 18, 2010, to schedule a public hearing and notify interested parties. A copy of the public notice of the hearing was mailed or e-mailed to each commenter on January 22, 1010. A notice was published in the Lynchburg News and Advance newspaper on January 26, 2010. The comment period closes at 4:00 p.m. on March 12, 2010. PUBLIC HEARING/COMMENT PERIOD: A public hearing will be held at the Forest Recreation Center in Forest, Virginia in Bedford County on February 25, 2010, at 7:00 pm. An informational meeting and a question and answer session will precede the hearing. Mr. Shelton Miles will serve as the Hearing Officer. The staff will present the results of the public hearing at the Board meeting.

Final Regulations

Underground Storage Tanks (UST): Technical Standards and Corrective Action Requirements (9VAC25-580) – Proposed Amendments Regarding Secondary Containment, Delivery Prohibition, and Operator Training for Owners and Operators – Final Regulation

9VAC25-580 – Proposed Amendments Regarding Secondary Containment, Delivery Prohibition, and Operator Training for Owners and Operators – Final Regulation: The federal Energy Policy Act requires states accepting federal funding for their UST programs to make certain changes to those programs. Some of these changes require a revision to Virginia's UST regulation. Specifically, these changes impose new requirements in three areas: (1) require secondary containment for certain tanks; (2) prohibit delivery to certain noncompliant tanks; and (3) require training for certain classes of UST operators. The attached final regulation amendments impose requirements that are as stringent as, but no more stringent than, the federal requirements. The goal of the amendments is to reduce the number and severity of petroleum leaks from UST systems by strengthening pollution prevention requirements and encouraging UST owners and operators to maintain compliant UST systems. Secondary containment for new and replaced USTs within 1,000 feet of a public water supply or potable well will help prevent future UST leaks and limit the extent and impact of contamination. A delivery prohibition program will provide added incentive for UST owner/operators to maintain compliant tank systems. Compliant tank systems reduce the likelihood and severity of petroleum leaks into the environment. An operator training program will educate UST operators about how to maintain compliant tank systems and how to recognize and respond to leaking USTs. Operator familiarity with UST regulatory requirements and with their own UST systems will increase compliance, help prevent future

UST releases and limit the extent, impact, and cleanup costs of contamination in the event of a release. The combined changes will reduce the risk of tank leaks as well as limiting the impact to the environment when leaks occur. Three people provided comments during the public comment period for these amendments. Their comments and staff response are summarized in the Virginia Regulatory Town Hall Agency Background Document. In response to these comments, staff recommends making four minor changes to the draft regulation. First, language in the requirements for delivery prohibition was amended to clarify when a deliverer is held responsible for delivering to an ineligible tank. Second, the requirement for certain classes of operators to be on site within 24 hours was replaced with the requirement that they be on site within a reasonable time to perform necessary functions. Third, the requirement for certain other classes of operators to be on site within 2 hours was replaced with the requirement that they be on site within a reasonable time to perform necessary functions. Finally, the retention period for owners and operators to maintain training records was specified. An additional set of comments was received from the Virginia Association of Municipal Wastewater Agencies, Inc. (VAMWA) after the public comment period had expired. Staff has reviewed these comments and believes the concerns raised by VAMWA can be addressed through clarifying guidance.

Proposed Regulations

General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Coin Operated Laundries (9 VAC 25-810)

The staff intends to bring to the Board, at the March 18-19 meeting, a request to adopt the draft general permit regulation for coin operated laundries. On December 7, 2005, the Board adopted the General VPDES Permit Regulation for coin operated laundries, which allowed the issuance of the general permit effective February 9, 2006. This general permit will expire February 8, 2011. In order to provide continued coverage for permittees, another general regulation must be in effect by February 9, 2011. The Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register on November 26, 2007 and the comment period expired on January 7, 2008. A summary of NOIRA comments is attached. A Technical Advisory Committee (TAC), composed of relevant stakeholders, was formed to assist the staff in the development of the draft general permit regulation. A summary of the TAC comments are attached. At the March meeting, the staff will be asking the Board to authorize notice and public hearings on the draft general permit regulation that will reissue this general permit for another five-year term. This is a reissuance of an existing regulation, and the only changes to the regulation are designed to clarify the intent of the regulation. Changes to the attached draft general permit regulation are indicated by deleted language stricken through and new language underlined. The major changes to the draft permit regulation being proposed are listed below:

9VAC25-810-10. Definition. "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges; load allocations (LAs) for nonpoint sources and/or natural background, and must include a margin of safety (MOS) and account for seasonal variations.

9VAC25-810-40. Effective date of the permit. This general permit will become effective on February 8, 2011. This general permit will expire on February 7, 2016.

9VAC25-810-50. Authorization to discharge. Item 3. Central sewage facilities are reasonably available. Item 4. The discharge violates the antidegradation policy in the Water Quality Standards at 9VAC25-260-30. Item 5. The board has established a “total maximum daily load” (TMDL) that has been approved by EPA prior to the term of this permit, and the TMDL contains a WLA for the facility, unless this general permit specifically addresses the TMDL pollutant of concern and meets the TMDL WLA. Items 3, 4, and 5 above are based upon comments on general permits reviewed by EPA over the past year for the denial of authorization of the general permit.

9VAC25-810-60. Registration statement. Item 7. A USGS topographic map or computer generated map showing the facility, discharge location and receiving stream and several other minor clarifications.

9VAC25-810-70. General Permit. The title of the general permit was changed to General Permit For COIN-OPERATED LAUNDRIES.

9VAC25-810-70. General Permit. A. Effluent Limitations and Monitoring Requirements. The total residual chlorine measurement of microgram per liter was changed to milligram per liter because this is how it is typically reported by laboratories. The E. coli limitation was excluded from the limits table because the data indicated that there is no reasonable potential to exceed the limit. In addition, the draft development document for *Proposed Effluent Limitations Guidelines and New Source Performance Standards for the Auto and Other Laundries Point Source Category*, USEPA, April 1974 and the *Class V Underground Injection Control Study. Volume 8, Wells That Inject Fluids from Laundromats without Dry Cleaning*, USEPA September 1999 did not characterize bacteria in this type of wastewater. Furthermore EPA did not consider fecal coliform in the *Effluent Guidelines Industrial Laundries Point Source Category Final Technical Development Document for Pretreatment Standards*, revised March 2000 and states in that document that EPA does not expect fecal coliform bacteria to be present in industrial laundry wastewaters because the laundering

chemicals added to laundry process water and the temperature of the water will likely destroy fecal coliform that may have been present on laundered items.

9VAC25-810-70. General Permit. B. Special conditions. Revisions to special conditions are as follows:

2. Operation and maintenance manual requirement. The permittee shall develop an Operations and Maintenance (O & M) Manual for the treatment works. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of this permit. The manual shall be submitted for staff approval within 90 days of February 8, 2011, or completion of construction. If an approved O & M Manual is already on file with DEQ, the permittee shall review the existing O & M Manual and notify the DEQ regional office in writing within 90 days of the date of coverage under the general permit whether it is still accurate and complete. If the O & M Manual is no longer accurate and complete, a revised O & M Manual shall be submitted for approval to the DEQ regional office within 90 days of the date of coverage under the general permit or with the above required notification. The permittee will maintain an accurate, approved operation and maintenance manual for the treatment works. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of the permit.

5. If the discharge is into a municipal separate storm sewer the permittee is required to notify the owner of the municipal separate storm sewer system of the existence of the discharge within 30 days of coverage under the general permit and provide the following information: the name of the facility; a contact person and phone number; the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number.

6. Deleted the explanation of daily maximum reporting since no daily maximum limits are present in this permit.

7. Regardless of the rounding convention used by the permittee (e.g., 5 always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

8. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

The above revisions are based upon the technical advisory committee and the EPA 2008 Multi-sector General Permit (MSGP). The Office of Attorney General is currently reviewing the draft general permit regulation and we expect their concurrence prior to the March Board meeting. A copy of the draft general permit will be provided to EPA for their review and comment immediately after the Board meeting. We anticipate receipt of their comments during the public comment period. At the March meeting the staff will ask the Board for authority to hold public hearings on the draft permit regulation. If the Board authorizes hearings, they could be held in June 2010. The staff would then bring a final regulation to the board for adoption at September 2010 meeting. This should allow us to reissue the permit before the existing one expires on February 8, 2011.

Request to Proceed to Notice of Public Comment and Hearing on Proposed Amendments to the Virginia Pollution Abatement (VPA) General Permit Regulation for Poultry Waste Management (9VAC25-630-10 et seq.)

At the March 18 meeting, staff intends to bring to the Board a request to proceed to notice of public comment and hearing on proposed amendments to the Virginia Pollution Abatement (VPA) General Permit Regulation for Poultry Waste Management (9VAC25-630-10 et seq.). These changes are being proposed in order to allow for the reissuance of the general permit under this regulation, which is due to expire on November 30, 2010. Statutory Authority: Va. Code § 62.1-44.17:1.1 authorizes the State Water Control Board to establish and implement the Poultry Waste Management Program. This Code section includes provisions that the Board must, at a minimum, include in its regulations developed pursuant to this authority, including provisions for permitting confined poultry feeding operations under a general permit. Background: The VPA General Permit Regulation for Poultry Waste Management (9VAC25-630-10 et seq.) first became effective on December 1, 2000 with the term of the permit being ten (10) years, thus expiring on November 30, 2010. There are approximately 900 confined poultry feeding operations in the Commonwealth permitted under this regulation. The most recent amendments to the general permit regulation added requirements for end-users of poultry waste in addition to those originally included for poultry producers. The requirements regarding end-use of poultry waste became effective on January 1, 2010. A Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register of Regulations on June 22, 2009. A 30-day public comment period followed which ended on July 22, 2009. Public comments were all in favor of reissuing the general permit in 2010. The Department utilized the participatory approach by forming an ad hoc regulatory advisory panel (RAP) that held one (1) public noticed meeting on February 16, 2010. A list of the members of the RAP is attached to this memo. The RAP discussed a few minor amendments to the regulation, none of which produced substantive changes to the requirements. This is because more substantive changes to this regulation were recently approved in December 2009 following extensive public involvement. The regulation with proposed amendments is attached, with added text underlined and deleted text struck through. A concise list of the proposed language changes is provided in the "detail of changes" section of the attached Town Hall document. There was a recommendation from some RAP members that the requirement for nutrient management plans

to be written by certified planners be removed since approval by DCR was also required. The proposed regulation retains this requirement because the DCR regulations specify that a "nutrient management plan" means a plan prepared by a Virginia certified nutrient management planner. This requirement is also consistent with other DEQ regulations which require that nutrient management plans be written by certified planners.

Petitions

Large-Scale Agricultural Operations Petition - A request to delay action until the next regular meeting has been received from the petition. Staff will provide a very brief report on what has transpired since the last meeting and ask that the Board direct staff to defer any further action on the rulemaking until after the Board considers this matter at its next regular meeting.

Consideration of Petition to Designate Urbanna Creek as Exceptional State Waters

Staff intends to ask the Board at their March 18, 2010 meeting for a decision on whether or not to initiate a rulemaking to amend the Water Quality Standards regulation to designate Urbanna Creek and its tributaries as Exceptional State Waters. Based on the site visit, staff has concluded that the creek does not meet the required eligibility criteria necessary for consideration of an Exceptional State Waters designation. Background: At the July 23, 2009 meeting of the State Water Control Board, staff presented for Board consideration a citizen petition from the Town of Urbanna to designate Urbanna Creek from the mouth of the creek at Bailey Point up to and including Town Bridge Pond and all tributaries named and unnamed such as Glebe Swamp and Town Bridge Swamp as Exceptional State Waters. Urbanna Creek is a relatively short but wide tidal tributary on the south side of the Rappahannock River. The main-stem is approximately 3 miles long with an area of around 290 acres. The Town of Urbanna boundary extends to the centerline of the creek from its confluence with the Rappahannock to approximately ¾ mile upriver. The remainder of the creek is within Middlesex County. By unanimous vote at the July 2009 meeting, the Board directed staff to: (1)Proceed with notification to Middlesex County, the Town of Urbanna, and riparian landowners who would be potentially impacted by an Exceptional State Water designation of Urbanna Creek and to provide these potentially impacted parties a 60-day opportunity for comment; (2) Publish in the Virginia Register the required notice of a 21-day comment period for the general public; and, (3) Appear before the Board after the close of the comment periods to provide a summary of the comments and the results of the staff site visit so that the Board can decide at that time what course of action to take on the petition. “Tier III” is how the public commonly refers to those waters that are protected from water quality degradation through a prohibition on new or increased point source discharges. The equivalent regulatory terms are “Outstanding National Resource Waters” for EPA and “Exceptional State Waters” for Virginia. Staff Site Visit: DEQ guidance for the exceptional state waters program calls for a staff site visit to the nominated waterbody for confirmation that the candidate water meets the exceptional state waters eligibility criteria. The nominated water body must meet certain eligibility criteria to be designated and protected by an Exceptional State Water, or Tier III, designation. The nominated water body must exhibit an exceptional environmental setting and either support an exceptional aquatic community or support exceptional recreational opportunities which do not require modification of the existing natural setting. Attachment 1 presents staff findings from a site visit conducted October 9, 2009 of the entire tidal portion of Urbanna Creek. The staff site visit report also contains photographs of the waterbody under consideration. The upper part of the creek is quiet and attractive. This portion has some sections of relatively undeveloped land with natural landscape and appropriate bird and animal habitat mixed in with a few homes. Urbanna creek, as it flows through Middlesex County and by the town of Urbanna, has about as much development, if not more, along its shores as other creeks of similar size in the lower Rappahannock River basin. As one progresses downriver, there is a moderate increase in the number of residences, docks, and boathouses and an increase in the amount of “hardened” shoreline (riprap or bulkheads to prevent erosion). Along the lower part of Urbanna Creek there are marinas, a hotel, yacht club, condominium development, numerous houses, as well as a sandy beach-type shoreline near the mouth. Though the general environs of the creek are pleasant and the area rich in history and local culture, agency staff that conducted the site visit concur that Urbanna Creek does not meet the crucial eligibility criteria of possessing an exceptional environmental setting for the following reasons: (i)The natural features of the basin do not significantly contribute to the overall appearance of Urbanna Creek. It is comparable in appearance to many of the small coastal streams of the lower Rappahannock River tidal estuary; (ii)The creek is not a national wild and scenic river nor is it an integral component of any federal or state park, wildlife refuge, or wildlife management area. The only other Exceptional State Water designation in Virginia tidal waters (Ragged Island Creek) benefits from being part of a wildlife management area on one side of the water body and surrounded by a wide expanse of marsh on the other side. These factors have an isolating effect and provide buffering from development and anthropogenic impacts; (iii)The creek and its environs are not remote or undeveloped but rather characterized as a suburban/urban, developing area. Access to the entirety of the tidal portion of the creek is readily available to motorized boats and jet skis. Existing Exceptional State Waters exhibit outstanding scenery without undue anthropogenic impacts and/or are located in remote areas and/or are part of a public protected area (national park/forest, Nature Conservancy lands, wildlife refuge or management area). Also, based on the 2008 water quality assessment, Urbanna Creek is listed as impaired for the shellfish consumption use due to exceedences of the fecal coliform bacteria standard, and is also listed as impaired for the aquatic life use due to low dissolved oxygen and not

meeting Chesapeake Bay shallow water submerged aquatic vegetation (SAV) uses. Summary of Comments:A full summary of comment received in response to the notification letters and the 21 day public comment period is provided as an attachment to this memo (Attachment 2). Written comment was not received from Middlesex County or the Town of Urbanna. Eight citizen comments in support of the nomination were received. Seven of them were identified as riparian landowners. Two citizen comments opposing the nomination were received. Both of these were identified as riparian landowners.

***Report on Significant Noncompliance*:** One permittee was reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter July 1 through September 30, 2009. The permittee, its facility and the instances of noncompliance are as follows:
Permittee/Facility: Town of Farmville, Farmville WWTP
Type of Noncompliance: Failure to Meet Permit Effluent Limit (Copper)
City/County: Farmville, Virginia
Receiving Water: Appomattox River
Impaired Water: The Appomattox River was listed as impaired for copper in the 2008 303(d) report. The source of the impairment was listed as the Town of Farmville WWTP.
River Basin: James River Basin
Dates of Noncompliance: March, May, June and July 2009
Requirements Contained In: VPDES Permit
DEQ Region: Blue Ridge Regional Office
The violations were addressed in a consent special order approved by the Board at its December quarterly meeting.

Consent Special Orders (VPDES Permit Program)
Craig-New Castle PSA (Craig Co.) - Consent Special Order without a civil charge
VPDES Permit No. VA0064599 (re-issued 3/23/09)
The Craig-New Castle Public Service Authority ("PSA") owns and operates the Craig-New Castle Wastewater Treatment Plant ("Plant"). DEQ issued Warning Letters to the PSA in March, April and July 2009 for effluent limit violations. The violations were primarily of Total Suspended Solids effluent limits. DEQ issued a Notice of Violation to the PSA in August 2009 for overflows that occurred on June 5 and 17, 2009. These overflows were due to Inflow and Infiltration ("I&I") from, respectively, 1.4 and 1.85 inch rain events, both of which occurred in saturated ground conditions. Previous letters from the PSA reporting overflows that occurred in January, April and May 2009 also linked the overflows to heavy rain in saturated conditions. DEQ enforcement specialist Robert Steele met with a PSA representative on August 28, 2009 to discuss the WLs, the NOV and the PSA's plans to improve TSS performance and prevent future unauthorized discharges. As documented during that meeting and in correspondence previously submitted by the City, the unauthorized discharges were all caused by inflow that occurred during periods of heavy rainfall. On June 16, 2009, the PSA completed replacement of 1,410 feet of sewer lines. This section of sewer line had been a known source of I&I and its replacement is expected to significantly reduce I&I. The PSA representative explained that a septic tank that discharges to the collection system appears to have inflow problems and that repair of that tank is the highest current priority in collection system work. He also explained that carp that are used as a part of the treatment process in a lagoon at the Plant have grown so large that they are believed to be stirring up enough algae in the lagoon to cause TSS problems. The PSA plans to remove the carp and replace them with smaller fish. As a long-term measure for improving TSS performance, the PSA is interested in pursuing grant funding for a sand filter or other means of treating for solids. A consultant for the PSA has written Plans and Specifications for a sand filter, but that idea has not been pursued because the PSA does not have funding for construction. In a letter dated September 11, 2009, the PSA provided a preliminary schedule of corrective action to address the inflow and TSS problems, including: 1) replacement of a septic tank at 167 Meadow Avenue that has deteriorated to the extent that it receives substantial inflow during heavy rain, 2) removal of carp from the Lagoon, and 3) camera work and smoke testing in the collection system to identify additional projects. The Order before the Board includes requirements to: 1) complete removal of the carp and replacement of the septic tank (as proposed in the PSA's Sept. 11, 2009 letter) by April 30, 2010; 2) by April 30, 2010, submit a interim schedule of corrective action for I&I removal to be completed by December 31, 2011; 3) by December 31, 2011, submit a final schedule of corrective action (based on further collection system evaluation) to be completed by December 31, 2014; 4) by 30 days after the effective date of the Order, submit a plan for plant upgrade (treatment capacity/efficiency) to be completed by December 31, 2012. The Order also includes requirements that the PSA apply for: 1) funding for a sand filter or other method of solids removal, and 2) funding for repair of the collection system. The consent order was signed on December 8, 2009. Civil Charge: $0

City of Bedford Waste Water Treatment Plant - Consent Special Order without a civil charge
VPDES No. VA0022390 (re-issued 6/23/08)

The City of Bedford ("the City") owns and operates a wastewater treatment plant ("Plant") in Bedford, Virginia. The City reported a total of fifteen unpermitted discharges from the sewage collection system that serves the Plant. All but one of the unpermitted discharges was explained by the City as being related to inflow and infiltration ("I&I") associated with heavy rainfall. The remaining overflow was caused by a grease blockage. The Order before the Board includes a requirement that the City submit for review and approval a plan and schedule of corrective action ("Plan") for the unauthorized discharges. The Order identifies a specific set of projects for the City to complete through the year 2011 and requires ongoing investigation of I&I sources. The initial submittal of the Plan will set out a schedule for completion of those projects for the fiscal years 2009/2010 and 2010/2011. By June 1, 2011, the City is required to submit a revised Plan that will include a schedule for additional I&I corrective action projects to be completed during the fiscal years 2012/2013 and 2013/2014. The Order requires the City to appropriate at least $100,000 in each operating budget specifically dedicated to the reduction of I&I for the fiscal years 2010/2011 through 2013/2014. The consent order was signed on October 14, 2009. Civil Charge: $0

Dare to Care Charities, Inc (Botetourt Co.)- Consent special order with civil charges
VPDES Permit No. VA0060909
Dare to Care Charities, Inc. ("DTCC") owns a wastewater treatment plant ("Plant") rated at 0.015 MGD at Camp Virginia Jaycee in Botetourt County. For the past several years, the Plant has had seasonal difficulties with consistently meeting ammonia limits. The Department re-issued the VPDES permit to DTCC on May 27, 2008. Permit requirements included verification of the existing Operations and Maintenance ("O&M") manual or submittal of a new O&M manual by August 26, 2008. DTCC is currently operating under interim permit limits. Final limits under the Permit are effective on May 27, 2010. The ammonia average concentration limit will change from 8.0 mg/l (interim) to 4.4 mg/l (final). The BOD limit average concentration limit will change from 30 mg/l (interim) to 12 mg/l (final). DEQ issued Warning Letters to DTCC in August, September, October, and November 2008 for effluent limit violations reported by DTCC in its monthly Discharge Monitoring Reports and for failure to update the facility Operations and Maintenance ("O&M") manual. Exceedance of the effluent limit for ammonia was the most consistent violation through this period. DEQ issued a Notice of Violation ("NOV") to DTCC in December 2008 for the above violations. Because DTCC failed to update the O&M manual and continued to have effluent limit violations, DEQ issued additional NOVs to DTCC from January through September 2009. The Order before the Board includes a civil charge and a requirement to submit a plan and schedule of corrective action to install and operate an in-ground wastewater disposal system and eliminate the discharge from the Plant no later than December 31, 2010. The Order also includes interim limits for ammonia and a requirement that DTCC decommission the Plant after the in-ground system becomes operational. The total project cost is estimated at $218,000. The consent order was signed on December 11, 2009. Civil Charge: $7,000

Bath County Service Authority-Hot Springs Regional STP - Consent special order with civil charges
VPDES Permit No. VA0066303
Bath County Service Authority ("BCSA") owns and operates the sewage treatment plant ("Plant") and the sewage collection system serving the Town of Hot Springs and the surrounding area in Bath County, Virginia. The Permit allows BCSA to discharge treated sewage and other municipal wastes from the Plant to Hot Springs Run, in strict compliance with the terms and conditions of the Permit. The design capacity of the present sewage treatment plant has been rated and approved as 0.45 MGD. On June 8, 2009, DEQ issued a Warning Letter to BCSA citing an unpermitted discharge (pump station overflow) on December 21, 2008 and unauthorized discharges of solids (solids carryovers) on January 7, March 1, and April 3, 2009. On July 8, 2009, DEQ issued a NOV to BCSA citing unauthorized discharge of solids (solids carryovers) on May 3 and May 4, 2009. The NOV also noted BCSA's relevant compliance history, including the issuance of the June 11, 2008 Warning Letter citing unauthorized discharge of solids (solids carryover), and an unpermitted discharge (pump station overflow) on January 6, 2008 and unauthorized discharges of solids (solids carryovers) on February 1 and 2 and April 4, 2008. On August 19, 2009, DEQ met with BCSA's representatives in an informal conference to discuss the July 8, 2009 NOV and included discussions on BCSA's plans to improve treatment, along with the status of I&I corrective actions. During these discussions, BCSA attributed a number of the solids carryovers to the loss of siphon during the operations of the Plant's traveling bridge. By letter dated September 10, 2009, BCSA submitted to DEQ for review and approval plans and specifications for the improvements to the Plant and a plan and schedule for conducting I&I investigations on BCSA's collection system. The I&I plan and schedule was revised by letter dated October 23, 2009. On October 15, 2009, DEQ approved a Certificate to Construct application for the construction of modifications to the siphon associated with the Plant's traveling bridge operations. The proposed Order requires BCSA to repair/upgrade the siphon and priming valves related to the Plant's traveling bridge to prevent solids carryovers, and to conduct I&I flow monitoring studies in the collection system to determine areas in need of repair/rehabilitation. BCSA is then required to submit a plan and schedule for repairing those problems found during the flow studies which, upon approval, will be incorporated by reference into the Order. The Order also includes a civil charge. Cost: $6,000 for the siphon repair. I&I costs unknown at this time. The consent order was signed on January 11, 2010. Civil Charge: $2,646.

Consent Special Orders (VPA Permit Program)

L. Wayne Hunt (Buckingham Co.)- Consent special order with civil charges

VPA General Permit No.VPG2, Registration # VPG270013

Haven Hollow Farm ("Farm") is owned and operated by Mr. L. Wayne Hunt. The Farm is located in Dillwyn, Virginia in the James River drainage basin, Buckingham County, Virginia. A confined poultry feed business is operated at the Farm. The management of pollutants, including chicken mortalities, at the Farm is regulated by VPA General Permit No. VPG2 ("Permit"), issued under the State Water Control Law and Regulations, which was issued on December 1, 2000 and which expires on December 1, 2010, as evidenced by Registration Number VPG270013. On September 30, 2009, Department compliance staff conducted an inspection of the Farm. Department compliance staff observed a confined poultry feeding operation using at least one disposal pit for routine disposal of daily chicken mortalities. The exact number of disposed birds is unknown because the only remaining evidence from the disposal was a substantial number of feathers and hundreds of bones. The main disposal pit was surrounded by several additional pockets of chicken remains located very close to one another. 9 VAC 25-630-50 at Part I.B.5 of the Permit states that disposing of mortalities in a pit is a practice that will not be allowed and that the use of a disposal pit for routine disposal of daily poultry mortalities by a permittee is considered a violation of the Permit. The Farm has the necessary composting equipment to properly manage the routine disposal of daily poultry mortalities as required in the Permit. As a result of the inspection, the Department issued Notice of Violation No. W2009-09-L-0011 to Mr. L. Wayne Hunt, owner of Haven Hollow Farm, on September 24, 2009 for the violation described above. The Order before the Board assesses a civil charge to Mr. L. Wayne Hunt for the improper routine disposal of daily poultry mortalities at Haven Hollow Farm. Civil Charge: $1,250

Wayne Freeze, Jr. (Page Co.) - Consent special order with civil charges

Virginia Pollution Abatement

Wayne Freeze, Jr., operates in the Commonwealth of Virginia as a Poultry Waste Broker within the meaning of 9 VAC 25-630-10 et seq. (i.e., he possesses more than ten tons of poultry waste in any 365-day period and transfers some or all of the waste to other persons). Mr. Freeze, Jr. failed to submit annual poultry waste transfer records for the calendar years 2007 and 2008 to DEQ by February 15th of each subsequent year as is required by 9 VAC 25-630-60(D). DEQ issued a Notice of Violation (NOV) to Mr. Freeze, Jr. on April 17, 2008 and February 27, 2009 for these recurring violations. Mr. Freeze, Jr. failed to respond to these Notices and DEQ staff scheduled an informal fact-finding meeting to resolve the case. On October 8, 2009, DEQ staff met with Mr. Freeze, Jr. and successfully negotiated the conditions of a Consent Special Order to resolve these violations, which he signed that same day. The order requires Mr. Freeze, Jr. to submit completed copies of his poultry waste transfer records for the calendar years 2007 and 2008 by November 15, 2009 and for calendar year 2009 by February 1, 2010. DEQ staff received completed copies of Mr. Freeze, Jr.'s poultry waste transfer records for the calendar years 2007 and 2008 on October 22, 2009. Despite the previous NOVs sent by DEQ staff to Mr. Freeze, Jr., one of which had to be served, he appeared to respond more positively to the emphasis and structure provided by the informal fact-finding procedures. The cost to comply with the order is negligible, as Mr. Freeze, Jr. had all the records available; he had just failed to submit them. The consent order was signed on October 8, 2009. Civil Charge: $2,000

Consent Special Orders (VWP Permit Program)

Fountainhead Land Co., LLC for Ballhyhack Golf Club (Roanoke)- Consent special order with civil charges

Virginia Water Protection Permit Program

On April 8, 2008, Department of Environmental Quality ("DEQ") received a citizen complaint of sediment discharge into a second order unnamed tributary of Back Creek ("2nd OUTBK"), which is the water body that intercepts runoff from Ballyhack Golf Course ("Ballyhack") on the property's south side. On April 10, 2008, DEQ inspectors conducted a Virginia Water Protection Permit ("VWPP") inspection of the Ballyhack Golf Course. The inspectors observed a fine-sediment discharge for over 1000 linear feet in a 2nd OUTBK. Pollution of State waters was caused directly by the intentional pumping of an upland pond's water into a 1st order unnamed tributary to Back Creek ("1st OUTBK"), which then flowed for approximately 700 linear feet into the 2nd OUTBK. Two pumps were observed actively moving water from the pond. Turbid, muddy water was pumped through 3-4" hoses over the pond berm to a make-shift sediment sock, and then to a row of 8-10 straw bales about 10 feet from 2nd OUTBK. The sock and straw bales were ineffectively filtering the water (solids only approximately larger than sand size were contained). The structures were not designed in accordance with the Virginia Erosion & Sediment Control Handbook. DEQ previously sent Fountainhead Land Company a Warning Letter in 2007 for another sediment discharge into an on-site stream for this project. On April 22, 2008, a Notice of Violation ("NOV") was issued for the violations found during the April 10th inspection. On July 18th and 25th of 2008, DEQ inspectors conducted another inspection of the Ballyhack and observed numerous other stream reaches containing sediment deposits. On September 20, 2008, DEQ issued a second NOV (NOV-08-08-WCRO-001) to Fountainhead Land Company addressing the violations observed during the July 18th and 25th inspections. On October 17, 2008, Balzer & Associates requested the Process for Early Dispute Resolution (PEDR). On December 3, 2008, DEQ Staff conducted the PEDR with Balzer and Associates and Landscapes Unlimited, consultants for Fountainhead Land Company. The PEDR resulted in Fountainhead

Land Company being required to perform compensation on a 1:1 ratio basis for the 50 linear feet of the golf green #13 to the Virginia Aquatic Resources Trust Fund, pursuant to 9 VAC 25-690-70(J) and 9 VAC 25-690-80(B). Furthermore, the dewatering of a sediment basin for conversion to an offline irrigation pond resulted in an unauthorized discharge of sediment to State waters requiring restoration. On October 28, 2009 during an inspection to determine what corrective actions would be required and possible SEP options were available, an additional violation was observed. Failure of erosion and sediment control measures used to stabilize a newly constructed road with a culvert had failed resulting in a discharge of sediment in to 100 lf of stream. Sediment discharge and pollution impacted a 2nd OUTBK as well as to a 1st OUTBK for approximately 1700 total linear feet. Sediment in the stream segments is significant, ranging from 3" to 12", for the different tributaries. Sediments adversely affect aquatic organisms and their food populations by acting directly on the fish swimming in the impacted waters by killing them, reducing their growth rate, or making them less resistant to disease. Sediment, in particular suspended solids (SS), also prevents the successful development of fish eggs and larvae. Sediment also reduces the abundance of food available to the organisms in the water column. Sediment, as in this case, that end up settling out of the water and cover the bottom of the stream damage the invertebrate populations and block gravel spawning beds. Fountainhead Land Company has worked with DEQ staff to implement the corrective action plan that is part of the Consent Order and removed the discharged sediment from the stream. Fountainhead has also submitted $20,000 to the Virginia Aquatic Resources Trust Fund to compensate for the 50 liner feet of permanent impact at golf course green #13. Civil Charge: $44,600

Summit Development Co., LLC (Radford)- Consent special order with civil charges
Unpermitted Site, Virginia Water Protection Permit Program
The parcel of land is located at the intersection of Tyler Avenue and Rock Road East, in the City of Radford, Virginia, and is owned by Summit Development Company, LLC ("Summit"). An unnamed tributary ("UT") of Connellys Run flows through the parcel. The UT is part of the New River Basin. On July 6, 2009, Department staff inspected the parcel for compliance with the requirements of the State Water Control Law and the Regulations. Department staff observed that approximately 750 linear feet of a channel had been filled with earth and rock, a pollutant. After the inspection, Department staff requested that the U.S. Army Corps of Engineers verify the jurisdictional status of the impacted channel. On July 28, 2009, Department staff conducted an announced site inspection in coordination with staff from the U.S. Army Corps of Engineers. Based upon the site inspection, the Corps indicated the channel is a jurisdictional stream, and a surface water, under state and federal law. The DEQ received correspondence from the Corps dated August 4, 2009 confirming that conclusion. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit dredging or filling of surface waters without a permit issued by the Director. Summit does not have a permit for the above activities. On August 19, 2009, DEQ issued NOV No. NOV-09-08-BRRO-R-007 to Summit for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50. The Order before the Board assesses a civil charge to Summit for the unpermitted dredging or filling of surface waters without a permit. The Order contains a Schedule of Compliance requiring Summit to purchase 563 mitigation credits on a multi-year schedule. No later than April 1, 2010, Summit will purchase 163 mitigation credits. Each April thereafter, Summit will purchase an additional 100 mitigation credits until the full amount of mitigation credits has been purchased. The Schedule of Compliance requires Summit to post an irrevocable letter of credit no later than March 1, 2010 for the 400 mitigation credits to be purchased over the four year period. Each year, Summit will revise the irrevocable letter of credit to reflect the cost of the remaining outstanding mitigation credits and any change in the cost of mitigation credits. Finally, the Schedule of Compliance requires Summit to immediately purchase the remaining outstanding mitigation credits if the parcel or a portion of the parcel is sold. The current cost of a mitigation credit is $375.00. The current cost to Summit for purchasing the 563 mitigation credits is $211,125.00. Civil Charge: $22,750

Glenwood South, LLC (Virginia Beach) - Consent special order with a civil charge
VWP General Permit Authorization No. WP4-03-1081
Glenwood South, L.L.C. (Glenwood South) owned and developed the Indian River Road Subdivision property on Flyfisher Court. DEQ issued VWP General Permit Authorization No. WP4-03-1081 (Permit) to Glenwood South on August 15, 2003 which expired August 14, 2008. The Permit authorized impacts to 0.39 acres of nontidal wetlands and required mitigation at a 2:1 ratio through the purchase of 0.78 credits from the Lower James River Mitigation Bank. The Permit also required an approximate 0.35 acre "Open Space" area of scrub-shrub wetlands. The Open Space area was to remain undisturbed, but the Permit did not require deed restrictions. Prior to visiting the Property, a file review indicated that DEQ staff had not received proof of purchase of the 0.78 credits from the Lower James River Mitigation Bank (or any other mitigation bank), 10-day pre-construction notification, pre-construction monitoring photographs, construction monitoring reports and photographs, and notice of termination for completion of all permitted impacts. On September 14, 2007 DEQ staff inspected the Property. The residential development appeared complete and all permitted impacts had been taken. However, additional unauthorized impacts appeared to have occurred. Significant alteration and degradation of wetlands and discharge of fill material impacted portions of the wetland areas within Lots 10 and 12 and the entire 0.35 acres of scrub-shrub wetland depicted as Open Space in the Permit. After the September 14, 2007 inspection, a review of aerial photographs indicated that significant alteration

and degradation of wetlands and discharge of fill material occurred in three additional wetland areas of the Property not authorized by the Permit. These three wetland areas are located in the Glenwood North Phase B1 development, east of Flyfisher Court and continuous with Adair Drive. According to a letter dated January 12, 2009 from MSA, P.C., consultants for Glenwood South, the three additional wetland areas totaled approximately 0.06 acres. In total, the significant alteration and degradation of wetlands and discharge of fill material resulted in 0.41 acres of unauthorized impacts to nontidal scrub-shrub wetlands on the Property. DEQ issued Notice of Violation No. W2007-10-T-1007 dated October 2, 2007 to Glenwood South for the significant alteration and degradation of, and discharge of fill material to, nontidal wetlands, and failure to submit proof of mitigation bank credit purchase, pre-construction notice, construction monitoring reports, and notice of termination for completion of all permitted impacts. On August 14, 2009 DEQ received confirmation that Glenwood has purchased the 0.78 wetlands bank mitigation credits required by the Permit. On September 30, 2009 DEQ received confirmation that Glenwood purchased 0.18 (3:1) compensation credits for the unauthorized impacts to 0.06 acres of nontidal wetlands from an approved wetlands mitigation bank in order to achieve no net loss of existing wetland acreage and functions in accordance with 9 VAC 25-210-116. At a market cost of $14,500 per acre from the Lower James River Mitigation Bank, the 0.18 acre credits cost $2,610. The Order requires purchase of 1.05 (3:1) compensation credits from an approved wetlands mitigation bank for the unauthorized impacts to the 0.35 acre nontidal scrub-shrub Open Space wetlands, and payment of a civil charge. At a market cost of $14,500 per acre from the Lower James River Mitigation Bank, 1.05 acre credits cost approximately $15,225. The Order was executed on January 27, 2010. Civil Charge: $24,852

VRO-Augusta Co. Service Authority-Augusta Regional Landfill - Consent special order with a civil charge
Virginia Water Protection Permit WP4-05-1080
Augusta County Service Authority ("ACSA") owns and operates a landfill serving Augusta County. ACSA is expanding the current landfill boundaries in order to increase the landfill's capacity for receiving municipal solid waste. The planned activity results in impacts to State water associated with an unnamed tributary to Christians Creek. On May 5, 2008, DEQ issued Virginia Water Protection Permit No. 07-0609 to ACSA for the property with an expiration date of May 4, 2023. The Permit authorized permanent impacts to approximately 0.14 acres of palustrine emergent wetlands, permanent impacts of approximately 0.38 acres of open water, and permanent impacts to approximately 1,712 linear feet of stream channel associated with an unnamed tributary to Christians Creek, each of which is considered State waters. On February 20, 2009, and February 23, 2009, DEQ requested that ACSA provide the status of the project following a February 2009 compliance file review, which found no record of final plans for the project's construction activities authorized by this permit, no record of the monthly preconstruction monitoring reports due beginning June 10, 2008, and no record of a notification of construction submitted prior to commencement of activities in permitted impact areas. On February 23, 2009, ACSA responded to the inquiry by requesting that DEQ provide it a copy of its Permit so that it could get the project back on track. ACSA, however, did not submit the required plan, the monitoring reports or the status of the project to DEQ. On March 26, 2009, DEQ issued a Warning Letter to ACSA for failure to provide final plans for the project's construction activities authorized by this Permit prior to beginning construction, failure to submit preconstruction reports, beginning construction prior to final plans approval, and failure to provide construction monitoring reports. By letter dated April 29, 2009, in response to the Warning Letter, ACSA indicated that permitted impacts had been taken, including 0.38 acres of open water and 0.14 acres of PEM wetlands. ACSA confirmed DEQ's observations in the Warning Letter and indicated that construction began November 4, 2008. ACSA also submitted final plans for project construction activities, site photos prior to, during, and after construction, and requested an extension for beginning the compensation site work. On May 11, 2009, DEQ issued a NOV to ACSA for failure to provide the monthly pre-construction progress reports beginning June 10, 2008, late submittal of the final plans for the project construction 30 days prior to beginning construction, failure to provide written notification ten days prior to beginning construction, and failure to provide monthly Construction Monitoring Reports. The proposed Order requires ACSA to comply with the Corrective Action Plan, including completing the plantings in the compensation area and the submittals of the outstanding reports. The Order also includes a civil charge. The consent order was signed on December 8, 2009. Civil Charge: $8,685

Ana Marie Estates/W.Bouros & Co. (Augusta Co.) - Consent special order with civil charges
Virginia Water Protection Permit WP4-05-1080
W. Boutros owns a 254-acre site, of which 166 acres are a housing development consisting of single family homes and townhouses at the tract of land ("Property") at State Route 254 west of the City of Waynesboro and Hopeman Parkway, owned by W. Boutros Property in the City of Waynesboro, Augusta County, Virginia. Compensation was required at a 1:1 ratio for 0.51 acres of palustrine emergent wetlands. On October 17, 2008, DEQ issued a Warning Letter to W. Boutros in care of Balzer and Associates (received October 29, 2008) for failure to provide a complete compensation plan prior to any construction activities in permitted impact areas, beginning construction prior to compensation plan approval, failure to cease construction when the compensation site had not been started within 180 days, failure to provide construction monitoring reports, and failure to respond completely to requests for information. By letter dated November 14, 2008, Balzer and Associates responded to the WL and clarified to DEQ that all permitted impacts had been taken and that no mitigation had

taken place. The letter did not address all of the outstanding issues with the Plan as outlined in the WL. On February 9, 2009, DEQ issued a NOV to W. Boutros in care of Balzer and Associates reiterating the violations cited on October 17, 2008. On March 5, 2009, DEQ staff met with representatives of W. Boutros and Balzer and Associates to discuss the alleged violations and corrective actions necessary for W. Boutros to return to compliance. W. Boutros agreed to submit a corrective action plan and to address the outstanding deficiencies with the Plan. On March 30, 2009, Balzer and Associates, on behalf of W. Boutros, submitted a written response to the NOV and information to update the Plan. On May 12, 2009, DEQ approved W. Boutros' Final Compensatory Mitigation Plan. W. Boutros represents that at all times it intended to maintain compliance with the Permit and the State Water Control Law and regulations, and was unaware of any deficiencies until Balzer and Associates shared the contents of DEQ's October 17, 2008 Warning Letter. W. Boutros further represents that at all times, it relied on the expertise and advice of its agent consulting firm. The proposed Order, signed by W. Boutros on October 20, 2009, requires W. Boutros to have an approved mechanism for protection of the compensation area site and to apply and obtain a continuance of the VWP Permit. The Order also includes a civil charge. The consent order was signed on January 11, 2010. Civil Charge: $8,919

Consent Special Orders (Other)

Howard Hughes Medical Institute (Loudoun Co.) - Consent special order with civil charges

Article 11-Petroleum Discharge and VWP general permit No. WP4-03-1537.

Howard Hughes Medical Institute (HHMI) is a non-profit medical research organization based in Chevy Chase, Maryland. The Janelia Farm Research Campus (JFRC), a division of HHMI, is a biomedical research center. On July 11, 2008, DEQ-NRO received notification of a discharge of Number 2 diesel fuel at the JFRC. Initial reports indicated that approximately 1,300 gallons of fuel had leaked from a generator tank located on the JFRC property. A JFRC security officer discovered the discharge at 10:30am on July 11, 2008. HHMI alleges that the spill occurred because the generator tank overflow system did not detect the fuel's flow capacity from the secondary tank, and there was a mechanical failure in the tank's overflow valve and overflow alarm. Spill response measures began at 10:39am on July 11, 2008, and HHMI reported the discharge to the required agencies. Following the spill, JFRC contacted a consultant to perform major spill clean up and remediation and excavation of the stream bed. HHMI reported that approximately 300 gallons of the discharged fuel was contained on the generator tank floor and siphoned through a manual pump. HHMI estimates that approximately 400 gallons were absorbed through the use of spill materials, and approximately 600 gallons of fuel entered a storm drain inlet and flowed into an unnamed tributary of the Potomac River. HHMI estimates that approximately 600 gallons of contaminated water and fuel was remediated from the stream area. During the remediation efforts, approximately 437 linear feet of stream channel were impacted. These actions were taken by the facility in an emergency situation so that further contamination would not occur. In response to the notification from HHMI of the spill, DEQ-NRO staff conducted a site visit of the JFRC on July 14, 2008, and noted that there was no sheen or free product present on the stream. Separate from the oil spill incident, DEQ-NRO VWP staff also conducted a site visit as part of a routine inspection on July 16, 2008 of VWP General Permit WP4-03-1537, which was issued to HHMI for the initial construction of the JFRC, and observed that permitted impacts had been exceeded by approximately 0.01 acre of palustrine forested wetland during the initial construction of the JFRC in 2003. DEQ-NRO VWP staff also observed that approximately 437 linear feet of stream channel were impacted as a result of remediation efforts from the oil spill. The Consent Order requires HHMI to perform compensation for unauthorized impacts to approximately 0.01 acre of palustrine forested wetland by purchasing 0.02 credits from a DEQ approved wetland mitigation bank located within the same U.S. Geologic Survey Hydrologic Unit Code as the project site or an adjacent HUC located within the Potomac River Watershed. In addition, the Order requires HHMI to complete 437 linear feet of stream stabilization in accordance with the DEQ approved final stream stabilization plan prepared by HHMI. HHMI is also required to complete and submit a monitoring report to DEQ after the stream stabilization plan has been completed. The monitoring report will be to verify that certain success criteria have been met. In addition HHMI will be required to complete compensation monitoring for the Palustrine Forested Wetland creation site which is in its final year of monitoring in accordance with the DEQ approved compensation plan. HHMI has taken several actions to ensure that a similar incident will not occur in the future. The facility has already spent and plans to spend a total of approximately $232,000.00 associated with implementing preventative measures to ensure a similar incident does not occur. In addition, the facility has spent a total of $275,120.98 to date in remediation costs. Civil Charge: $16,718

Shore Landvest, Inc. - Consent special order with civil charges

Ground Water Withdrawal Permit No. GW0039200

Shore Landvest, Inc. (d/b/a Sunset Beach Resort) ("Shore Landvest") owns and operates the Facility, a hotel/restaurant complex. The Permit was issued to the previous owner effective August 1, 1996, with an expiration date of July 31, 2006. The Permit was modified on July 1, 1999, to reflect a change in the Facility's ownership to Shore Landvest. The Permit authorized Shore Landvest to withdraw and use 7,650,000 gallons of ground water per year; no more than 1,420,000 gallons could be withdrawn in any calendar month. The Permit specified that the withdrawal of ground water was to originate from three wells that supply water for the Facility and required Shore Landvest to record monthly ground water withdrawal from

each well and from the total well system and submit the results to DEQ quarterly by the tenth day of January, April, July and October for the preceding quarter. Additionally, the Permit required Shore Landvest to submit a new permit application 270 days before the expiration date of the Permit (i.e., by November 3, 2005). Shore Landvest submitted a timely application to renew the Permit on October 4, 2005. Discussions with Shore Landvest and its technical consultants to develop a complete permit application continued through November 2006 (the Permit expired July 31, 2006) as Shore Landvest was considering two additional well sites, which required the development of additional technical data. Beginning in December 2006, DEQ continued discussions with a third party that was considering purchasing the Facility and the third party's technical consultant. As the prospective purchaser was considering withdrawing ground water from an aquifer not addressed in Shore Landvest's permit application, technical discussions between DEQ and the prospective purchaser's consultant were protracted, continuing until July 2007. A review of DEQ files revealed that the last communication related to the permit application was a letter from DEQ to the prospective purchaser's technical consultant dated July 19, 2007. In the course of resolving an unrelated matter, DEQ staff was informed by the president of Shore Landvest that the sale of the Facility had not been consummated and that Shore Landvest wanted review of its October 5, 2005, permit renewal application to be revived. DEQ advised the president of Shore Landvest by letter dated August 7, 2008, of the information DEQ needed to complete its permit application review; DEQ requested a response by September 8, 2008. The August 7, 2008, DEQ letter was transmitted again by electronic mail on October 27, 2008. The president of Shore Landvest responded by letter dated October 27, 2008, to the effect that, due to changes in personnel at the Facility, he was unable to locate the review comments provided by DEQ in response to the original permit application in October 2005 or the supporting material that had been prepared by Shore Landvest's technical consultant in support of that application. In a telephone conversation with DEQ staff on March 10, 2009, the president of Shore Landvest stated that he would contact its consultant and submit to DEQ the information it had requested in its August 7, 2008, letter. Despite not having a permit authorizing it to do so, Shore Landvest has continued to withdraw ground water and to submit quarterly ground water withdrawal reports. Consequently, on April 21, 2009, DEQ issued a Notice of Violation ("NOV") to Shore Landvest for failing to complete its permit application and for continuing to withdraw ground water without a permit. As of the date of this summary, Shore Landvest has not provided the information requested by DEQ in its August 7, 2008, letter to complete its review of the October 4, 2005, permit application. The Order requires Shore Landvest to pay a civil charge within 30 days of the effective date of the Order. Because of the due-process requirements of the governing statute and regulation, Shore Landvest can continue to withdraw ground water under the conditions outlined in the now-expired Permit provided it submits to DEQ within 60 days of the effective date of the Order the information DEQ requires in order to complete its review of the permit application. Should Shore Landvest not provide that information within 60 days, any further withdrawal of ground water would be considered a violation of the Order. The consent order was signed by a Shore Landvest responsible party on November 1, 2009. Civil Charge: $32,000

Other Business - Revolving Load Fund

Approval of FY 2010 Green Reserve Projects for Public Review/Comment

Title IV of the Clean Water Act requires the yearly submission of a Project Priority List (PPL) and an Intended Use Plan (IUP) in conjunction with Virginia's Clean Water Revolving Loan Fund Capitalization Grant application. In December, the Board authorized the FY 2010 PPL and IUP, recognizing that the documents would have to be amended at a later date to add "green reserve" projects that were newly required through the 2010 federal appropriation bill. Background: At its December, 2009 meeting, the Board approved 17 projects totaling $202,150,267 in loan assistance from available and anticipated FY 2010 resources. As you may recall, after the staff had completed the annual application solicitation and review cycle, Congress added a new requirement to this year's funding appropriation which stipulated that at least $8.4 million of this year's federal capitalization grant must go to "green reserve" type projects. Since this was not a part of the original solicitation process, and in order to meet this new requirement, it became necessary for the staff to conduct an additional solicitation of applications solely for green reserve projects. This solicitation process is currently underway with an application deadline of February 26, 2010. The staff intends to review the applications and present funding recommendations for tentative Board approval subject to the receipt of public review and comment.